

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of	)	
the Pay Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions of	)	
the Telecommunications Act of 1996	)	
	)	
RBOC/GTE/SNET Payphone Coalition	)	NSD File No. L-99-34
Petition for Clarification	)	

REPLY COMMENTS OF COMMUNIGROUP OF K.C, INC.,  
D/B/A CGI, COMMUNIGROUP OF JACKSON, INC., NTS  
COMMUNICATIONS, INC., VARTEC TELECOM, INC.,  
TRANSTEL COMMUNICATIONS, INC., AND  
CENTURYTEL LONG DISTANCE, LLC

The undersigned switch-based long distance resellers (the “Joint Switch-Based Resellers” or “JSBRs”) respectfully submit these reply comments to the Commission, responding to the points made by other parties in the opening round of comments.

Parties submitting comments disagreed on the workability of the current system in which the facilities-based interexchange carrier (“FIXC”) pays the payphone service provider (“PSP”) and then seeks reimbursement for such payments plus its administrative expenses from the switch-based reseller (“SBR”). From the perspective of the JSBRs, the current “FIXC-pays” system is workable with some corrections but is by no means ideal. Other parties, however, point out significant flaws in the FIXC-pays system, and it appears from these comments that the JSBRs’ relative success implementing the FIXC-pays system may be unusual.

Sprint and many other parties, including both FIXCs and SBRs, urged the Commission to adopt a caller-pays system. The calling party places coins in the payphone and that is it – the PSP is compensated without complicated billing among PSPs, FIXCs, and SBRs. Many of the

JSBRs had previously advocated that solution in the early phases of the payphone proceeding, and, upon reading the other parties' comments, the JSBRs urge the Commission to consider it. Only a caller-pays system is certain to put an end to the complicated regulatory and enforcement problems that have consumed the last seven years, as the Commission has tried to establish a system involving involuntary business relationships between the many PSPs and carriers.<sup>1</sup>

Several other parties advocate systems in which the SBR pays the PSP directly. While the JSBRs agree with the Commission's tentative conclusion that the particular SBR-pays system in effect prior to the *Second and Third Orders on Reconsideration*<sup>2</sup> did not work well, the modifications proposed by both SBRs and FIXCs should result in an effective SBR-pays system. The key is requiring the FIXC to report to the PSP the number of calls associated with each of the FIXC's SBR customers. With that information, the PSP is in as good a position to proceed against the SBR as against the FIXC, and the efficiencies of a one-step payment process (SBR pays PSP rather than FIXC pays PSP and seeks reimbursement from SBR) can be attained.

If the Commission adopts a SBR-pays system, it should be careful to state that it is superseding contract provisions requiring the SBRs to pay the FIXCs for payphone calls. These contract provisions were adopted in response to the *Second and Third Orders on Reconsideration*, which permitted FIXCs to seek payment from the SBR to recover the FIXC's

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<sup>1</sup> Should the Commission determine to consider a caller-pays system, it should issue and publish in the Federal Register a request for further comments in order to prevent any later procedural argument that the caller-pays system was not one of the range of alternatives covered by the current *Further Notice of Proposed Rulemaking* (FCC 03-199). It should also issue a rulemaking order extending the FIXC-pays system past September 30, 2003 while it considers comments on a caller-pays system.

<sup>2</sup> *Second Order on Reconsideration, Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 16 FCC.Rcd. 8098 (2001), *remanded*, 315 F.3d 369 (D.C. Cir. 2003) (remand based on lack of publication of Notice of Proposed Rulemaking in the Federal Register, not the merits of the Commission's substantive determinations); *Third Order on Reconsideration*, 16 FCC.Rcd. 20922, para. 7 (2001) (clarifying *Second Order on Reconsideration*).

costs of paying the PSPs and an administrative charge. Pursuant to 47 U.S.C. Secs. 201 and 205, the Commission has jurisdiction to regulate FIXC charges and practices, and can order modification of contracts.<sup>3</sup> The only other option would be to gradually implement a SBR-pays system as each individual contract requiring the SBR to pay the FIXC expires, which would create confusion in the industry that is not in the public interest.

However, should the Commission determine to adopt a FIXC-pays system, the following steps will greatly enhance the chances of success in that endeavor:

(1) Clarify or as necessary modify the *Second and Third Orders on Reconsideration* to confirm that under a FIXC-pays system, the PSP must proceed against the FIXC and cannot proceed against the SBR. Absent that clarification, it will be unclear in any given case whether the FIXC or SBR must pay. Moreover, absent that clarification, the SBR may be exposed to double liability if it pays the FIXC and then is sued by the PSP. This issue is fully discussed in the JSBR opening comments, and suggested rule language including protections for PSPs are attached to those comments. To its credit, one major PSP coalition (APCC) acknowledges that the SBR has no direct liability to the PSP under a FIXC-pays system.<sup>4</sup>

(2) Avoid the confusion that would result from mixing elements of a SBR-pays system with a FIXC-pays system. Certain FIXCs maintain that even in an FIXC-pays system, the

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<sup>3</sup> *Cable & Wireless v. FCC*, 166 F.3d 1224, 1231-32 (D.C. Cir. 1999).

<sup>4</sup> APCC Comments at 17 (“As for resellers, those who were actually paying compensation under the old rule have adjusted their systems to reflect the fact that they are no longer required to pay the PSPs directly.”) (June 23, 2003, CC Docket No. 96-128, emphasis added)..

FIXC's only responsibility is to bill the SBR and forward whatever the SBR pays (if anything) to the PSP. Thus the FIXCs envision the PSPs first pursuing the FIXC and, if that does not yield payment, then pursuing the SBR. The end result of so mixing a SBR-pays and a FIXC-pays system would be the same confusion as to who is responsible for payment that existed prior to the *Second and Third Orders on Reconsideration*. In the event of a dispute involving SBR call completion reports or reconciling accounts, the FIXC's incentive would be to tell the PSP "the SBR didn't pay" rather than to work through the dispute with the SBR. A bright line rule establishing FIXC responsibility is far more workable, particularly given the FIXC's contract rights to terminate service to the SBR or file a collection action against the SBR.<sup>5</sup>

(3) Reaffirm the Third Order on Reconsideration. Any FIXC-pays system must forbid the FIXC from charging the SBR for uncompleted calls. Thus, in any FIXC-pays system, the *Third Order on Reconsideration* must be re-affirmed. As the Commission knows, in the interim between the *Second and Third Orders on Reconsideration*, the FIXCs announced a policy of paying the PSPs for all calls reaching SBR switches, completed or uncompleted, and requiring the SBRs to reimburse the FIXCs for such payments. This policy would have provided a substantial advantage to the FIXCs in serving their retail customers (which only had to pay for completed calls). By contrast, the FIXCs' wholesale customers (the SBRs) would have had to pay for completed and uncompleted calls, to the detriment of competition. The FIXC policy also violated the statutory requirement that PSPs be compensated only for

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<sup>5</sup> Also the FIXCs today make SBRs pay wholesale long distance charges even if the SBR's end user customer fails to pay the SBR. Similarly, in an FIXC-pays system, there is no reason for PSPs to let an FIXC off the hook if the FIXC's customer (the SBR) fails to pay.

“completed” calls. 47 U.S.C. Sec. 276. Fortunately the Commission speedily issued the *Third Order on Reconsideration* quashing the FIXCs’ policy – a crucial step that permitted the JSBRs to enter into reasonable contract arrangements under which the JSBRs report the number of completed calls to the FIXC.<sup>6</sup>

(4) Cap FIXC administrative charges to SBRs at the current 2 cent per call industry standard, or alternatively, require the FIXCs to recover their administrative costs through their rates for long distance service. If the Commission adopts a FIXC-pays system, it will be over the opposition of the FIXCs, who may be tempted to react by increasing the administrative charge dramatically, to the point at which as a practical matter the FIXC-pays system becomes unworkable. MCI’s recent threat to raise the administrative charge from 2 cents to 17 cents per call provides the Commission with fair warning of this possibility.<sup>7</sup> Of course the FIXCs impose the payphone administrative charge only on the SBR customers and not on their end user customers, so the charge is one of special concern under the Commission’s long standing policy preventing facilities-based IXCs from discriminating unreasonably against reseller customers. From a competitive viewpoint, the practical impact of permitting FIXCs to impose unreasonably

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6 Call completion reports are necessary where the FIXC cannot tell if the call delivered to the SBR completes to the called party. This is the case for certain calls that “re-originate”, i.e. the call reaches a SBR debit card or similar platform and the caller punches in a PIN and the number of the called party. Absent re-origination, the FIXC can tell whether the call completes, e.g. if a consumer dials the 1-8XX number of a catalog company that has hired the SBR as its long distance carrier. See Qwest Comments at 6 (June 23, 2003, CC Docket No. 96-128); CommuniGroup of K.C., et al. Opposition at 7-9 (Oct. 9, 2001, CC Docket 96-128).

7 In an analogous situation, the FCC last year banned IXCs from imposing administrative mark-ups when recovering from customers the costs of the IXCs’ contributions to the Federal Universal Service charge. *In the Matter of Federal-State Joint Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC.Rcd. 24952, FCC 02-329, para. 51, 53 (Dec. 13, 2002).

high administrative charges is much the same as permitting the FIXC to charge the SBR for uncompleted calls.<sup>8</sup>

The JSBRs note that the double payment issue, the FIXC administrative charge issue, and the issue of reporting completed calls to the FIXC all are irrelevant if a caller-pays or SBR-pays system is adopted.

### **Conclusion**

The JSBRs urge the Commission to choose carefully among the three basic alternative systems for payphone compensation (caller-pays, SBR-pays, and FIXC-pays), and to avoid taking any action that (1) exposes SBRs to the risk of paying twice for the same payphone call, (2) leaves any uncertainty as to whether the FIXC or the SBR is responsible for paying the PSP, (3) allows FIXCs to impose unreasonable administrative charges on SBRs, or (4) allows FIXCs or PSPs to charge SBRs for uncompleted calls.

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<sup>8</sup> A final way to avoid the administrative charge issue is to permit SBRs to opt out of the FIXC-pays system and pay the PSPs directly. Because the PSPs have made clear their preference to deal with FIXCs, this opt-out right will only work if there is no PSP veto.

Respectfully submitted

CommuniGroup of K.C, Inc., d/b/a CGI  
CommuniGroup of Jackson, Inc.  
NTS Communications, Inc.  
VarTec Telecom, Inc.  
Transtel Communications, Inc.  
CenturyTel Long Distance, LLC

By their counsel

/s/ James U. Troup / JHL

James U. Troup  
James H. Lister  
McGuireWoods, LLP  
Suite 1200, 1050 Connecticut Ave., NW  
Washington, DC 20036  
(202) 857-1700  
(202) 857-1737 (fax)

Stan Stoll  
Blackburn & Stoll  
77th West 200 South, Suite 400  
Salt Lake City, UT 84101  
801-521-7900  
801-521-7965 (fax)

Counsel for Transtel Communications, Inc.

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